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No. 86-2024

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

DAVID GLEN MEYERS, et al., Petitioners,

v.

CONTRA COSTA COUNTY DEPARTMENT OF SOCIAL SERVICES, et al., Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

APPENDIX

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June 10, 1987

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David Glen MEYERS, et al.,

Plaintiffs-Appellants

v.

CONTRA COSTA COUNTY DEPARTMENT

OF SOCIAL SERVICES, et al.,

Defendant-Appellees.

No. 85-2127

United States Court of Appeals,

Ninth Circuit.

Argued and Submitted March 11, 1986.

Decided March 16, 1987.

Father, his children and his parents brought civil rights action against various parties, including social service workers, court employees and county department of social services based on their actions during dependency proceeding. The United States District Court for the Northern District of California, Marilyn H. Patel, J.,

granted defendants' motion to dismiss, and plaintiffs appealed. The Court of Appeals, Schroeder, Circuit Judge, held that: (1) social services worker was entitled to prosecutorial immunity for his role in initiation of dependency proceedings; (2) employees of conciliation court who allegedly refused to allow father visitation rights and attempted to bias foster parents were entitled to quasi-judicial immunity; and (3) county department of social services could not be held liable for unauthorized activities of its employees.

Affirmed.

1. Social Security and Public Welfare -5

Social services worker was entitled to prosecutorial immunity for his role in initiating dependency proceedings against father. 42 U.S.C.A. § 1983.

2. Social Security and Public Welfare -5

Social workers are entitled to absolute immunity in performing quasi-prosecutorial functions connected with initiation and pursuit of child dependency proceedings.

3. Social Security and Public Welfare -5

Social services worker was entitled to qualified immunity for ordering father to stay away from his home before dependency hearing. 42 U.S.C.A. § 1983; West's Ann.Cal.Welf. & Inst.Code § 16501.

4. Courts -55

Employees of conciliation court who allegedly refused to allow father visitation rights and attempted to bias foster parents were entitled to quasi-judicial immunity; employees were performing judicial function at direction of court, controversy involved pending case to which they had been assigned, and events at issue arose directly and immediately out of confrontation between employees and parties in that case.

42 U.S.C.A. § 1983.

5. Civil Rights -13.7

County department of social services could not be held liable for unauthorized activities of its employees during child dependency proceeding. 42 U.S.C.A. § 1983.

Vaughn E. Spunaugle, Richmond, Cal., for plaintiffs-appellants.

Jeffrey G. Nevin, San Francisco, Cal., and Thomas A. Watrous, Martinez, Cal., for defendants-appellees.

Appeal from the United States District Court for the Northern District of California.

Before SCHROEDER, CANBY and BOOCHEVER, Circuit Judges.

SCHROEDER, Circuit Judge:

In this appeal we must decide whether a social service worker performing duties re-

lated to the filing of child custody and abuse proceedings has absolute prosecutorial immunity. We must also decide whether principles of quasi-judicial immunity apply to court employees participating under court directives in the resolution of family disputes.

The plaintiffs are David Meyers, his children and his parents. They brought this civil rights action under 42 U.S.C. § 1983 against David's former wife Amy, and numerous individual and governmental defendants. They claimed that the defendants conspired, under color of state law and without due process of law, to prevent the adult plaintiffs from associating with the minor plaintiffs in deprivation of a liberty interest. The district court dismissed as to all defendants. The plaintiffs appeal only the dismissals as to appellees Haaland, a social worker, Allison and Crossley, em-

ployees of the Family Conciliation Court, and the Contra Costa County Department of Social Services (DSS). We hold, first, that Haaland was entitled to absolute prosecutorial immunity for all of his actions except those which preceded the institution of judicial proceedings and as to those actions, qualified immunity applies; second, that Allison and Crossley were entitled to quasi-judicial immunity for their actions; and, third that the plaintiffs never demonstrated that the acts complained of were pursuant to a policy or practice of the DSS. We affirm the district court in all respects.

Haaland

Haaland was a social casework specialist employed by the DSS in its Children's Protective Services Unit. Among his numerous responsibilities were the initiation and pursuit of dependency petitions in cases of suspected child neglect and abuse. His

alleged conduct about which plaintiffs complain in this appeal was directly related to those functions.

Plaintiffs claim that, beginning on October 9, 1981, Haaland conspired with Amy Meyers to deprive David Meyers of custody of their children. According to the complaint, after being told by Amy that David had molested their son Paul, Haaland embarked on a course of conduct designed to separate Paul from his family by supervising an investigation and filing verified dependency petitions with the juvenile court of the Contra Costa County Superior Court requesting that the minor children be declared dependents of the juvenile court and removed from the custody of their father.

In this appeal plaintiffs place particular emphasis on the allegation that on October 23, 1981, Haaland ordered David to stay away from his home until after a judicial

hearing could take place on October 26, although Haaland knew that the police department had terminated its investigation for lack of evidence. At the October 26 hearing, Haaland stated that he would arrange for supervised visitation between David and his children. According to the complaint, Haaland permitted David only one opportunity to visit with his children between the date the petition was filed, October 26, and the date it was dismissed pursuant to Haaland's recommendation, November 17.

The complaint also states that in a January 19, 1982 custody hearing, Haaland in furtherance of his conspiracy with Amy to deprive David of custody, testified to his conclusion that David had molested Paul. Haaland's role appears to have ceased at this point. David was eventually reunited with his children when a superior court

awarded him custody on January 23, 1984.

All of Haaland's challenged actions except for the January 1982 testimony took place within a short period of time--between October 9, 1981, and November 17, 1981. All revolve around Haaland's initiation of dependency proceedings against David. They include his instructions to David before proceedings were instituted to stay away from the children until custody had been resolved, and his subsequent testimony against David in the dependency proceedings. The district court held that Haaland was entitled to absolute immunity for these actions. We agree as to all except actions which were taken before the institution of judicial proceedings.

It is beyond question that Haaland is entitled to absolute immunity for the testimony he gave during the dependency proceedings and the custody hearing because

witnesses, including government witnesses, are immune from liability for their testimony. Briscoe v. LaHue, 460 U.S. 325, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983).

[1] Haaland should be accorded prosecutorial immunity for his role in the initiation of dependency proceedings against Meyers. The Supreme Court has held that prosecutorial immunity derives from a need for the exercise of independent judgment in the conduct of public duties. Imbler v. Pachtman, 424 U.S. 409, 423, 96 S.Ct. 984, 991, 47 L.Ed.2d 128 (1976). Prosecutorial immunity is absolute, rather than qualified, in order to permit prosecutors to perform their duties without fear of even the threat of section 1983 litigation. If the prosecutor were only qualifiedly immune,

> the threat of § 1983 suits would undermine performance of his duties no less than would the threat of common-law

suits for malicious prosecution. A prosecutor is duty bound to exercise his best judgment both in deciding which suits to bring and in conducting them in court. The public trust of the prosecutor's office would suffer if he were constrained in making every decision by the consequences in terms of his own potential liability in a suit for damages.... Further, if the prosecutor could be made to answer in court each time ... a person charged him with wrongdoing, his energy and attention would be diverted from the pressing duty of enforcing the criminal law.

... Frequently acting under serious constraints of time and even information, a prosecutor inevitably makes many decisions that could engender colorable claims of constitutional deprivation. Defending these decisions, often years after

> they were made, could impose unique and intolerable burdens upon a prosecutor responsible annually for hundreds of indictments and trials.

Id. at 424-26, 96 S.Ct. at 992-93; see also Butz v. Economou, 438 U.S. 478, 512, 98 S.Ct. 2894, 2913, 57 L.Ed.2d 895 (1978) ("[a]bsolute immunity is ... necessary to assure that judges, advocates, and witnesses can perform their respective functions without harassment or intimidation").

[2] Although child services workers do not initiate criminal proceedings, their responsibility for bringing dependency proceedings, and their responsibility to exercise independent judgment in determining when to bring such proceedings, is not very different from the responsibility of a criminal prosecutor. The social worker must make a quick decision based on perhaps incomplete information as to whether to

commence investigations and initiate proceedings against parents who may have abused their children. The social worker's independence, like that of a prosecutor, would be compromised were the social worker constantly in fear that a mistake could result in a time-consuming and financially devastating civil suit. We therefore hold that social workers are entitled to absolute immunity in performing quasi-prosecutorial functions connected with the initiation and pursuit of child dependency proceedings. Such a holding is consistent with the holdings of other courts. See, e.g., Kurzawa v. Mueller, 732 F.2d 1456, 1458 (6th Cir.1984); Pepper v. Alexander, 599 F.Supp. 523, 526-27 (D.N.M.1984); Whelehan v. County of Monroe, 558 F.Supp. 1093, 1098-99 (W.D.N.Y.1983).

[3] We do not agree, however, that all of Haaland's alleged conduct falls within

the scope of quasi-prosecutorial activities. On October 23, Haaland allegedly ordered Meyers to stay away from his home until after the hearing before the juvenile court. At that time, Haaland had not yet initiated dependency proceedings. Haaland is not entitled to absolute immunity for this act.

In Ashelman v. Pope, 793 F.2d 1072 (9th Cir.1986) (en banc), we examined the contours of both judicial and prosecutorial immunity. We stated:

> Prosecutorial immunity has developed along much the same lines as judicial immunity. Immunity extends to protect a prosecutor who acts within his or her authority and in a quasi-judicial capacity.... Where a prosecutor acts as an advocate "in initiating the prosecution and in presenting the state's case," absolute immunity applies.

Id. at 1076 (quoting Imbler, 424 U.S. at

431, 96 S.Ct. at 995). Haaland's ordering of Meyers away from his home can be characterized neither as advocatory or quasi-judicial. Haaland's action did not aid him in the preparation or presentation of his case to the juvenile court. Compare Walden v. Wishengrad, 745 F.2d 149 (2d Cir.1984)(absolute immunity for social services attorney who requested warrant to insure testimony of witnesses.). Rather than contributing to an informed judgment by an impartial decisionmaker as an advocate, Haaland acted unilaterally prior to the operation of the judicial process. We do not suggest that Haaland's alleged action was necessarily improper; it was merely not that of an advocate.

Furthermore, the policy considerations that support quasi-judicial immunity do not apply to Haaland's action. In Sellars v. Procunier, 641 F.2d 1295 (9th Cir.), cert.

denied, 454 U.S. 1102, 102 S.Ct. 678, 70 L.Ed.2d 644 (1981), we considered the justification for the doctrine of quasi-judicial immunity. After examining the benefits of absolute immunity for certain decisionmakers, we stated:

> Nevertheless, the balance might not be struck in favor of absolute immunity were it not for the presence of safeguards built into the judicial process that tend to reduce the need for private damage actions as a means of controlling unconstitutional conduct.

Id. at 1300. We then quoted a portion of the following passage from Butz.

> The cluster of immunities protecting the various participants in judge-supervised trials stems from the characteristics of the judicial process rather than its location....

> ...[T]he safeguards built into the judicial process tend to reduce the need for private damages actions as a means of controlling unconstitutional conduct. The insulation of the judge from political influence, the importance of precedent in resolving controversies, the adversary nature of the process, and the correctability of error on appeal are just a few of the many checks on malicious action by judges.... Because these features of the judicial process tend to enhance the reliability of information and the impartiality of the decisionmaking process, there is a less pressing need for individual suits to correct constitutional error.

438 U.S. at 512, 98 S.Ct. at 2913-14.

Haaland's alleged decision to order Meyers away from his house was made in the absence of such "safeguards built into the judicial process." Haaland himself was not

subject to the checks operating on judicial decisionmakers, nor was his decision part of or ancillary to pending judicial proceedings supervised by a judge.

Although absolute freedom from the threat of unfounded lawsuits is an ideal condition for decisionmaking, such freedom is the rare exception to the rule. See id. at 508, 98 S.Ct. at 2911-12. We conclude that, like the decisions of other officials acting in a non-judicial role, it is the qualified immunity standard which must govern Haaland's immunity defense for the alleged action of ordering Meyers from his house. See Davis v. Scherer, 468 U.S. 183, 104 S.Ct. 3012, 82 L.Ed.2d 139 (1984); Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727, 73 L.Ed.2d 396 (1982). See also Duchesne v. Sugarman, 566 F.2d 817 (2d Cir. 1977)(applying qualified immunity doctrine to conduct of social worker when no court

proceedings had been filed). Haaland's decision to order Meyers away from his house is sufficiently protected by that doctrine.

In Duchesne, the social worker actually took custody of the children, instituted no court proceedings, and for many months refused the parent's demands for a hearing. 566 F.2d at 822-24. The Second Circuit held that the parent's rights had been violated and that triable issues were raised as to the applicability of the qualified immunity defense. Id. at 833. We have found no cases similar to this one, however, in which the social worker acted promptly to institute proceedings after unilaterally attempting to influence a parent-child relationship. Under the doctrine of qualified immunity, executive officers are shielded from liability where "their conduct does not violate clearly established statutory or constitutional rights of which a reasonable per-

son would have known." Harlow, 457 U.S. at 818, 102 S.Ct. at 2738. Under California law, social workers are given broad general authority to protect and promote the welfare of all children; to prevent or remedy problems which may result in the neglect or abuse of children. Cal.Welf. & Inst. Code § 16501 (West Supp.1987). The relevant pre-1982 section provided that a "child protective services program ... shall take such actions as are considered necessary to protect the child and correct the situation...." Cal.Welf. & Inst. Code § 16501 (West 1980). Haaland's conduct on October 23, which indisputably involved no physical interference with parental custody, cannot be said to have violated clearly established statutory or constitutional rights.

Allison and Crossley

[4] Crossley is a "supervising counselor"

and Allison is an "associate counselor" of the Family Conciliation Court. Their positions were created by the Family Conciliation Court Act and they are employees of the court. Their duties, as described by Cal.Civ.Proc.Code § 1744, encompass mediation of custody and visitation disputes, investigating matters pertaining to such disputes, and providing reports to the courts.

During the fall of 1977, the parents, Amy and David Meyers, together with the paternal grandparents, participated in a series of voluntary counseling sessions conducted by Allison under the auspices of the Family Conciliation Court. The adult plaintiffs allege that during these sessions Allison became biased against them. They further allege that at some point during the latter half of 1981, but before October 8, 1981, Amy made allegations of child abuse to

Allison who willfully failed to discuss them with David or to otherwise investigate them. The complaint alleges that on November 16, 1981, David and Amy attended a mandatory conciliation session with a counselor from the Family Conciliation Court, and that upon learning of the session, Allison induced Crossley to reassign the case to her in spite of her bias against David.

The complaint further alleges that from November 19, 1981, through January 21, 1982, Allison refused to arrange for visitation between David and his children in willful violation of a court order requiring her to arrarge such visits. The complaint continues that on or about April 7, 1982, Crossley and Allison visited the foster parents in whose care the court had placed the children and attempted to induce them to refuse David and his parents the right to see

the children.

The district court held that Allison and Crossley, as officers of the court, were entitled to quasi-judicial immunity. We have granted quasi-judicial immunity to various officers of the court. See, e.g., Sharma v. Stevas, 790 F.2d 1486, 1486 (9th Cir.1986)(clerk of the United States Supreme Court); Demoran v. Witt, 781 F.2d 155, 158 (9th Cir.1985)(probation officers); Sellars, 641 F.2d at 1303 (parole officers).

Based on these precedents, we agree with the district court that as officers of the court Allison and Crossley have absolute immunity in the performance of duties authorized by the statute. Although the plaintiffs allege that certain actions taken by Allison and Crossley constituted violations of court orders, absolute immunity is lost only if these actions were "clearly and completely outside the scope of [Allison's

and Crossley's] jurisdiction." Demoran, 781 F.2d at 158. Their actions were not outside that scope.

Allison and Crossley were performing a judicial function at the direction of a court. The controversy involved a pending case to which they had been assigned, and the events at issue arose directly and immediately out of a confrontation between the defendants and parties in that case. The allegations that Allison and Crossley refused to allow David visitation rights and attempted to bias the foster parents are not materially different from the allegation that a judge and prosecutor conspired to deprive a prisoner of effective counsel and access to legal materials. In Ashelman, we held the latter allegation insufficient to overcome judicial and prosecutorial immunity. 793 F.2d at 1078.

The County Department of Social Services

[5] The district court held that the plaintiffs had made an insufficient showing that the acts complained of in this case were pursuant to an established policy or practice as required by Monell v. Department of Social Services, 436 U.S. 658, 691, 98 S.Ct. 2018, 2036, 56 L.Ed.2d 611 (1978). We agree with the district court that

> a close reading of the first count of the complaint indicates that it is not the policies themselves that are alleged to give rise to the constitutional deprivations of which plaintiffs complain. Rather, the complaint states that various unauthorized actions were committed by the named defendants in furtherance of an alleged conspiracy to deprive plaintiffs of custody of the children.

Because municipalities are not liable for the unauthorized activities of their employ-

ees, the district court correctly dismissed the claim as to DSS.

Affirmed.

BOOCHEVER, Circuit Judge, dissenting in part:

I believe that the Meyers have stated sufficient allegations of deprivation of statutory and constitutional parental rights by alleging that Haaland ordered David Meyers to stay away from his home. I would remand for resolution of the factual issues involved in a qualified immunity defense.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DAVID GLEN MEYERS, GEORGE ALBERT MEYERS, GEORGIA ANN MEYERS, PAUL DAVID MEYERS, a minor, MATTHEW CHRISTOPHER MEYERS, a minor, ANGELA JENNIFER MEYERS, a minor, by their next friend, DAVID GLEN MEYERS. Plaintiffs, vs. CONTRA COSTA COUNTY DEPARTMENT OF SOCIAL SERVICES, AMY GARCIA MEYERS, NANCY BOWMAN, HAROLD HAALAND, also known as HAROLD BUEIDE, FAMILY CONCILIATION COURT OF THE SUPERIOR COURT OF CONTRA COSTA COUNTY, KAY CROSSLEY, AGNES H. ALLISON, JAMES PALMER, and FAMILIES UNITED RESOURCE DEVELOPMENT BOARD, INC., a corporation, Defendants.	NO. C-84-6381-MHP MEMORANDUM AND ORDER

Plaintiffs bring this action pursuant to 42 U.S.C. §1983 for alleged violations

of their constitutional rights resulting from state proceedings removing the minor plaintiffs (Matthew, Angela and Paul Meyers) from the custody of their father (David Meyers) and paternal grandparents (George and Georgia Meyers). Named as defendants in their official and individual capacities are the children's mother Amy Meyers, the Contra Costa County Department of Social Services ("DDS"), DDS social worker Haaland, the Family Conciliation Court of the Superior Court of Contra Costa County ("FCC"), FCC Director Crossley, FCC Counselor Allison, Families United Resource Development Board ("FU"), FU psychologist Palmer, and FU employee Bowman.

The gravamen of the civil rights claim is that the various defendants conspired to deprive the adult plaintiffs of contact with the children. Plaintiffs also bring pendent state claims for intentional infliction of

emotional distress, negligent infliction of emotional distress, libel, and slander. They seek $16 million in damages for each alleged constitutional violation and $20 million for each pendent claim.

Defendants have moved to dismiss or for summary judgment. Having considered the parties' papers and heard oral argument the court grants defendants' motions and dismisses the §1983 and pendent state claims.

Background

The facts as presented in the complaint and the parties' supporting papers are as follows: On October 8, 1981 Amy Meyers ("Amy") and Haaland allegedly entered into a conspiracy to deprive Davis Meyers ("David") of the custody of his children. Amy told Haaland that David had sexually molested one of the children (Paul), and a Haaland's instruction brought Paul to the DSS Children's Protective Service facility the next

day. Haaland "interrogated" Paul at that time, and summoned Richmond and San Pablo police officers who again "interrogated" Paul about the charges. Complaint at 4 ¶2. When David arrived at the DSS facility to look for Paul he too was detained and interrogated by the police officers. Paul was taken to Brookside Hospital for a medical examination.[1/]

On October 23 the San Pablo Police Department informed David it had terminated its investigation of the child molestation charges for lack of evidence. David communicated this fact to Haaland and informed Haaland he was going home to see his children. Haaland allegedly ordered David to stay away from his home pending a hearing on October 26 regarding a dependency petition filed by Haaland pursuant to Cal. Welf. & Inst. Code §300(a).[2/] See Haaland Dec. at ¶5. David claims that Haaland knew or should

have known the statements in the petition were false. Complaint at 6 ¶6.

David, his attorney, Amy and Haaland appeared before a Juvenile Court Referee on October 26. The Referee detained Pail in Amy's custody due to "immediate and urgent necessity for [his] protection. See Findings and Order of Referee on Detention (Reply Brief of Harold Haaland, Exh. A). Plaintiffs claim that as a result of this hearing Haaland unlawfully assumed control of visitation over the children. Complaint at 7 ¶7.[3/]

The hearing on the dependency petition was continued until November 17, David, his parents, and his attorney attended the hearing, at which time the petition was dismissed pursuant to Haaland's recommendation. Haaland states that he so recommended "because the mother was doing everything she

could to protect the child and had agreed to continue protective services on a voluntary basis . . ." Haaland Dec. at ¶7. Plaintiffs claim that this dismissal denied them an opportunity to be heard regarding the allegations against them. Complaint at 8 ¶8. However, plaintiffs' attorney withdrew his objection to the dismissal. Haaland Dec. at ¶7.

Meanwhile, Amy had initiated divorce proceedings and had obtained a temporary restraining order forbidding David from occupying or approaching the family residence. On November 16 David and Amy attended a mandatory conciliation session with an FCC counselor. Plaintiffs claim that defendant Allison, who had developed an "aversion to and bias against" the plaintiffs following voluntary counseling sessions in 1977, induced defendant Crossley to assign the Meyers case to her. Plaintiffs allege that Allison

acted pursuant to a conspiracy with Amy. Complaint at 9 ¶2, 10 ¶3, 11 ¶5.

At a Superior Court hearing on November 19 the court awarded temporary custody to Amy pursuant to the following stipulation regarding visitation: "Visitation shall take place under the supervision of the Conciliation Court and in the presence of a neutral adult to be selected by the Conciliation Court." Complaint at 11 ¶6. Plaintiffs allege that defendant Allison refused to arrange for visitation between November 19, 1981 and January 29, 1982 in violation of court order.

Haaland referred the Meyers case to FU for psychological examination in November 1981. In January 1982 defendant Palmer issued a report concluding that David had sexually molested Paul and recommending no contact between Paul and his father or grandparents. Plaintiffs claim that Palmer

was acting in concert with Haaland and Amy and knew or should have known that the allegations were false. Complaint at 12 ¶8.

On January 29, 1982 a second custody/visitation hearing commenced before the Superior Court. Haaland and Palmer testified at the hearing. Plaintiffs allege that the defendants knew or should have known their testimony was false. Complaint at 12 ¶9. The hearing was continued until February 5, at which time the court awarded custody to Amy and found that visitation between David and the children should commence as soon as an appropriate "neutral" monitor was appointed. The court expressed concern regarding Amy's attitude towards reestablishment of contact between the father and the children and stated that without a significant change in this attitude the court would remove the children from her custody and place them with the father or a third party.

Myers v. Myers, No. 228557, slip op. at 2 (Sup. Ct. February 5, 1982) (FU Motion to Dismiss, Exh. A).

Foster care parents (the Richardsons) took custody of the Meyers children on March 29 pursuant to court order. The court ordered Crossley to make a home visit to the Richardsons and make a written report. Plaintiffs allege that Crossley and Allison visited the Richardsons' home on March 29, 1982 and attempted to influence the Richardsons against David and his parents. Complaint at 12 ¶12. Plaintiffs further allege that Amy so harassed the Richardsons in furtherance of her conspiracy with Haaland that on April 9 the Richardsons surrendered custody of the children to Amy. Complaint at 14-15 ¶13. David eventually was awarded custody in January 1984. Myers v. Myers, No. 228557, slip op. at 2 (Sup. Ct. January 23, 1984) (FU Motion to Dismiss Exh. B).

Discussion

1. Counts One and Two

Counts one and two of the instant complaint attempt to state claims under 42 U.S.C. §1983. The first count pertains to those activities prior to the dismissal of the dependency petition on November 17, 1981, i.e., the initial removal of the minor plaintiffs from the custody of the father. The second count addresses alleged violations relating to the custody proceeding before the Superior Court. For the reasons set forth below, the complaint fails in the first instance because the constitutional violations alleged do not state claims under 42 U.S.C. §1983. Even were the alleged violations sufficient, the complaint would fail because plaintiffs may not proceed under that statute against any of the named defendants.

A. Failure to State a Claim

Section 1983 provides a cause of action for the "deprivation of any right, privilege or immunities secured by the Constitution and laws" of the United States. 42 U.S.C. §1983. Defendants do not dispute that the right of both parents and children to remain together without the "coercive interference of the awesome power of the state" is a liberty interest protected by the constitution. Duchesne v. Sugarman, 566 F.2d 817, 825 (2nd Cir. 1977). However, the existence of a protected right alone does not suffice to state a claim under 42 U.S.C. §1983. In order to survive a motion to dismiss, plaintiffs must also allege that they were deprived of their liberty interests under color of state law without due process. Parratt v. Taylor, 451 U.S. 527, 537 (1981)(distinguishing between the existence of a protected

interest and the deprivation of that interest without due process). This plaintiffs have failed to do.

In Parratt v. Taylor, the Court ruled that when an individual is deprived of property by the unauthorized, negligent conduct of state officials there is no due process violation as long as the state provides meaningful post-deprivation remedies. The Court reasoned that pre-deprivation remedies are not feasible when a state employee acts in a random and unauthorized manner rather than pursuant to state procedures because the state cannot predict when such actions will occur. The Court found its decision consistent with prior rulings that

> either the necessity of quick action by the State or the impracticality of providing any meaningful predeprivation process, when coupled with the availability of some meaningful means by which to

> assess the propriety of the State's action at some time after the initial taking, can satisfy the requirements of procedural due process.

451 U.S. at 539 (footnote omitted). The Supreme Court applied this reasoning to unauthorized intentional deprivation of property in Hudson v. Palmer, __ U.S. ___, 104 S. Ct. 3194 (1984). The Ninth Circuit has extended Parratt to deprivations of liberty interests. Haygood v. Younger, 718 F.2d 1472, 1480 (9th Cir. 1983), rehearing granted en banc, 729 F.2d 613 (9th Cir. 1984); Bretz v. Kelman, 722 F.2d 503 (9th Cir. 1983); Rutledge v. Arizona Board of Regents, 660 F.2d 1345 (9th Cir. 1981), aff'd sub nom Kush v. Rutledge, 103 S.Ct. 1483 (1983).[4/]

Parratt and its progeny do not apply when state policies and procedures are claimed to violate constitutional rights. Plaintiffs allege that the DSS regulations as

carried out by Haaland, including its policy of "crediting all allegations of child sexual abuse regardless of circumstances," violated their constitutional rights. Complaint at 8 ¶9. The complaint is no more specific as to the particular policies at issue. However, the policy articulated by plaintiffs, the actions of Haaland as alleged, and the provisions of Cal. Welf. & Inst. Code §300 et seq. convince the court that the purpose of the policies of which plaintiffs complain is to provide immediate relief to children in an emergency situation. Accordingly, policies allowing for immediate removal of a child from the custody of a parent charged with sexual abuse do not violate due process as long as the parent may be heard on the action at a subsequent proceeding. Ewing v. Mytinger & Casselberry, 339 U.S. 594, 598 (1950)("no hearing at the preliminary stage [of an administrative proceeding] is required

by due process as long as the requisite hearing is held before the final administrative order becomes effective"). See also Duchesne v. Sugarman, 566 F.2d at 826 (finding that "the initial removal of the children without parental consent or a prior court order was permissible" in response to an emergency situation); Williams v. Birzon, 576 F. Supp. 577, 579 (W.D.N.Y. 1983), aff'd 740 F.2d 955 (2nd Cir. 1984) ("the state's obligation to protect the health and safety of minor children authorizes an award of temporary custody without a pre-deprivation hearing"). The complaint itself indicates that plaintiffs were present at hearings on the matter within three weeks of the initial deprivation. Thus, plaintiffs cannot claim that the DSS policies themselves violated their constitutional rights.[5/]

Moreover, a close reading of the first count of the complaint indicates that it is

not the policies themselves that are alleged to give rise to the constitutional deprivations of which plaintiffs complain. Rather, the complaint states that various unauthorized actions were committed by the named defendants in furtherance of an alleged conspiracy to deprive plaintiffs of custody of the children. For example, Haaland is charged with detaining and interrogating David, ordering him to stay away from his home, and assuming control of visitation without lawful authority, and with filing a false dependency petition. Such actions are precisely the types of unauthorized conduct which, for purposes of §1983, can be corrected by the opportunity for post-deprivation review.

As noted, the complaint itself makes clear that plaintiffs were afforded an opportunity to be heard on the award of temporary custody to the mother shortly after the

children were removed from the father: Paul was first removed from David's custody on October 9, 1982, and hearings on the matter were held on October 26 and November 17. The instant case thus differs significantly from Duchesne v. Sugarman, where the court found a due process violation when the state did not seek to obtain ratification of its order to retain custody of the children for 36 months after they were taken from the mother, and only after the mother had initiated habeas corpus proceedings. 566 F.2d at 826. The court finds due process requirements satisfied in this case. Accord Whelehan v. County of Monroe, 558 F. Supp. 1093, 1102 (W.D.N.Y. 1983)(distinguishing Duchesne and finding state remedies subsequent to removal of child from parental custody adequate to satisfy due process).

The complaint further alleges that Haaland's dismissal of the dependency

petition violated plaintiffs' rights because it deprived them of the opportunity to be heard regarding the allegations against them. Even if the dismissal of the petition impinged on protected liberty interest, the complaint fails to state a claim for deprivation of constitutional rights in light of state procedures designed to compel commencement of juvenile court proceedings. See Cal. Welf. & Inst. Code. §331.[6/] Moreover, the complaint itself makes clear that custody/visitation hearings were commenced before the Superior Court two days after Haaland dismissed the petition.

Finally, count two of the complaint charges various defendants with depriving the adult plaintiffs of their constitutional right of contact with the children by interfering with the visitation agreement established by the Superior Court. This count also charges defendants with improperly

influencing the custody determination. The actions of which plaintiffs complain, which allegedly were "overt acts" in furtherance of the alleged conspiracy, include Allison's failure to arrange for visitation of the children by the father, Palmer's filing of a false report, Palmer's and Haaland's giving of false testimony at custody hearings, and Allison's and Crossley's attempt to influence the Richardsons.

Again, these allegations fail to state a claim because adequate state post-deprivation remedies were available to redress the alleged violations. For example, plaintiffs had ample recourse to state contempt procedures to compel state officials to comply with the orders of the Superior Court regarding visitation. Moreover, the facts as alleged show that the custody proceedings before the Superior Court were ongoing after the initial award of custody to Amy and that

the adult plaintiffs ultimately were awarded custody of the children. The court finds the continued opportunity to litigate the custody determination in this case satisfies the requirement of due process. Accord Williams v. Birzon, 576 F. Supp. at 579-80 (finding that the numerous opportunities to challenge an award of temporary custody afforded plaintiff adequate due process of law).

In sum, the availability and, indeed, the utilization of various state proceedings in which the adult plaintiffs could litigate custody and/or visitation of the children precludes an action for deprivation of constitutional rights under §1983. It is the opportunity for a meaningful hearing that determines the adequacy of procedural due process, not the result of such a hearing. "While it is conceivable that state judicial machinery might be used to deprive a person of his property without due process of law[,]

. . . in order to make out such a case under the civil rights act, a plaintiff must show that federally protected rights were denied in state proceedings which were so abused or manipulated that they were in effect a nullity." Gill v. Gill, 412 F. Supp. 1153, 1157 (E.D. Pa. 1976). The facts pleaded in the instant complaint do not make such a showing.

B. Failure to Name Proper Defendants

Plaintiffs argue that their allegations of conspiracy to deprive them of custody of the children, coupled with the identification of various "overt acts," suffice to survive a motion to dismiss. However, the instant complaint is wholly lacking in specific facts showing that Amy, Haaland, the FCC employees, and the FU employees conspired to deprive plaintiffs of their constitutional rights. Conclusory allegations are insufficient to state claims under the civil rights statutes. Hutchinson v. United

States, 677 F.2d 1322, 1327 (9th Cir. 1982). Moreover, many of the "overt acts," such as the allegations regarding Crossley and Allison's visit to the Richardsons, are not the proximate cause of the alleged deprivations.

Even if the overt acts alleged would constitute acts in furtherance of conspiracy to violate plaintiffs' civil rights, this action must be dismissed because plaintiffs may not proceed under 42 U.S.C. §1983 against any of the named defendants.

1. The Family Conciliation Court

Cal. Civ. Pro. §1740 provides that "[e]ach superior court shall exercise the jurisdiction conferred by this chapter, and while sitting in the exercise of such jurisdiction shall be known and referred to as the "family conciliation court." Thus, the FCC is the same entity as the Superior Court. State courts are not subject to suit under

42 U.S.C. §1983. O'Connor v. Nevada, 686 F.2d 749 (9th Cir.) cert. denied., 459 U.S. 1071 (1982) (dismissing civil rights action against state court under Eleventh Amendment).

2. Allison and Crossley

Crossley is a "supervising counselor" and Allison is an "associate counselor" of the FCC. Their positions are created by the Family Conciliation Court Act; they are hired and fired by the Court, and their duties are described by statute. Cal. Civ. Pro. §1744. These duties encompass those described in the instant complaint: conducting mediation of custody and visitation disputes, investigating matters pertaining to such disputes, and providing reports to the court. Inasmuch as Crossley and Allison are officers of the court and the actions of which plaintiffs complain were performed in the course of their employment, they are entitled to "quasi-judicial" immunity, even for

allegedly conspiratorial acts. Agnew v. Moody, 330 F.2d 868, 869 (9th Cir.), cert. denied, 379 U.S. 867 (1964).

Plaintiffs argue that immunity should extend to officers of the court only if they perform prosecutoral functions. Plaintiffs ignore the developments in the doctrine of immunity in civil rights cases, which extends immunity to numerous officers of the court, including those performing functions similar to these defendants. See, e.g., Burkes v. Callion, 433 F.2d 318 (9th Cir. 1970), cert. denied, 403 U.S. 908 (1971)(quasi-judicial immunity extended to probation officers and court-appointed psychiatrists).

3. Harold Haaland

Haaland is a social worker employed by the Contra Costa County Department of Social Services. Cal. Welf. & Inst. Code 300 et seq. gives him the discretion to determine whether to take a child into protective

custody and whether to file a dependency petition with the state in cases of suspected child abuse. These duties resemble those of a prosecutor with respect to child welfare cases.

Haaland argues that he should be afforded absolute immunity for his actions in this case. In Imbler v. Pachtman, 424 U.S. 409 (1976), the Court granted prosecutors absolute immunity from liability under 42 U.S.C. §1983. The court reasoned the "public trust" would suffer if prosecutors had to make decisions regarding which cases to initiate and pursue while contemplating personal liability for their actions. 424 U.S. 424-25. See also Butz v. Economou, 438 U.S. 478, 512 (1978) ("Absolute immunity is . . . necessary to assure that judges, advocates, and witnesses can perform their respective functions without harassment or intimidation").

Plaintiffs appear to concede that Haaland is immune from suit to the extent that his actions are prosecutorial. However, they argue that he should not be afforded immunity for non-prosecutorial actions taken after he dismissed the dependency petition. Plaintiffs cite Morrison v. Jones, 607 F.2d 1269, 1274 (9th Cir. 1979), cert. denied, 445 U.S. 962 (1980), for the proposition that DSS employees should not be afforded immunity. This case is not on point. The DSS employee at issue in Morrison was the Director of the Department, who was afforded qualified immunity in light of his position as an executive officer. The non-prosecutorial duties of a social worker such as Haaland are far different from the duties performed by a DSS Director and raise questions of policy not addressed by the Morrison court.[7/]

In Whelehan v. County of Monroe, 558 F.

Supp. 1093 (W.D.N.Y. 1983) the court extended the immunity afforded prosecutors in Imbler to Social Services Department employees performing both prosecutorial and investigative functions in cases of child abuse. Plaintiffs in Whelehan sued a county social worker and other defendants for damages sustained when their child was removed from their custody pursuant to a lawful but erroneous charge of child sexual abuse. The court wrote,

> The great importance of the child-protective function served by these defendants is beyond question. If these defendants, and others who serve like functions in society, were forced to execute their duties with one eye constantly regarding the possibility of incurring liability for their conduct, the detriment to society and the judicial system would be at least as great as if they were prosecutors of the kind specifically protected by Imbler.

Id. at 1098.

This court is persuaded by the reasoning in Whelehan and grants Haaland absolute immunity for all actions in connection with his employment with DSS. The court is particularly impressed, as was the Whelehan court, with the discretion afforded DSS employees such as Haaland in performing their duties of responding to, investigating, and acting upon reports of suspected child abuse. The instant case is distinguishable from Doe v. County of Suffolk, 494 F. Supp. 179 (E.D.N. Y. 1980) in this respect for the Doe court based its refusal to grant absolute immunity to a social worker on its finding that the defendant had virtually no discretion in performing her duties.

Finally, in addition to the immunity afforded Haaland for actions taken in performing his duties, he is entitled to absolute immunity for his testimony at the custody/visitation hearing. Briscoe v.

LaHue, 460 U.S. 325 (1983)(police officer and private party witnesses held absolutely immune from liability for allegedly perjured testimony at a criminal trial).

4. Department of Social Services

Plaintiffs name the Contra Costa County Department of Social Services as a party to this action. Essentially, a suit against the Department is a suit against the County. Municipalities are subject to suit under §1983. Monell v. Department of Social Services, 436 U.S. 658 (1978). However, they may not be held liable under 42 U.S.C. §1983 for the actions of their employees under a theory of respondeat superior. Id. at 691. The gravamen of this complaint is that Haaland's actions outside the scope of his authority violated plaintiffs' rights. Under Monell, plaintiffs may not hold the County liable for the alleged misconduct of its employee.

In order to state a §1983 claim against a municipality, plaintiffs must allege that "under color of some official state policy [the municipality] 'causes' an employee to violate another's constitutional rights." Monell, 436 U.S. at 692. As noted, plaintiffs do allege that Haaland acted pursuant to an official policy that all allegations of sexual abuse be credited regardless of circumstances. For the reasons set forth in Part IA of this order, the court finds this policy does not violate plaintiffs' constitutional rights. Moreover, this court fails to see how this policy itself "caused" the deprivations plaintiffs claim they suffered. Plaintiffs have not shown an "affirmative link" between the occurrence of misconduct and the policy or custom at issue. Rizzo v. Goode, 423 U.S. 362, 371 (1976).

5. Families United

FU is a state-licensed psychological

clinic which treats incest victims and families. Section 1983 pertains only to constitutional violations under color of state law. Plaintiffs make no showing that FU is a "state actor."

Indeed, the complaint states no allegations against this defendant. It states only that Haaland referred the Meyers case to FU, and FU employee Palmer conducted interviews and testified at one of the custody hearings. Apparently, plaintiffs seek to impose liability on FU for the alleged misconduct of Palmer in concert with Haaland. Even if Palmer were a state actor, plaintiffs could not impose §1983 liability on FU for the actions of its employee under a theory of respondeat superior. Powell v. Shopco Laurel Co., 678 F.2d 504 (4th Cir. 1982).

6. James Palmer

A private party could be said to act under color of state law if he or she jointly

engages with state or local officials in conduct prohibited by the constitution. Adickes v. S. H. Kress and Co., 398 U.S. 144, 152 (1970). However, conclusory allegations that Palmer conspired with Haaland to deprive plaintiffs of their civil rights do not suffice to state a claim that Palmer acted under color of state law. Glaros v. Perse, 628 F.2d 679, 685 (1st Cir. 1980) (general allegations of cooperation between private and state actors do not state a claim of action under color of state law).

"[T]o determine whether [a private party] acted under color of state law, the circumstances surrounding the private [action] must be examined in their totality." Howerton v. Gabica, 708 F.2d 380, 384 (9th Cir. 1983). In Howerton, the court found that private landlords were state actors for the purposes of an eviction when they "deliberately cloaked themselves with the

authority of the state in effecting repossession of the trailer premises." Id. at 384-85. The private landlords repeatedly requested the aid of the police, and the police "intervened at every step." Id. at 385.

Plaintiffs herein merely allege that Palmer conducted an interview of the Meyers family and prepared a report at the behest of a state official. Assuming arguendo that such activities implicate constitutionally-protected rights, they hardly rise to the level of the actions attributed to the private landlords in Howerton. Instead, this case is similar to Fonda v. Gray, 707 F.2d 435 (9th Cir. 1983), where the court declined to find a conspiracy between two private banks and government officials to violate plaintiff's constitutional rights. The Fonda court distinguished Howerton and wrote,

> there was no showing here that the banks 'deliberately' participated with

> the government with the purpose of violating [plaintiff's] civil rights, or that they knew of the alleged objective. Instead, the banks merely acquiesced in what appeared to them to be a proper FBI investigation.

707 F.2d at 438.

For the reasons set forth above, the court finds that Palmer was not a state actor with respect to his activities in the instant case. Further, even if he were a state actor he would be entitled to absolute immunity for his testimony as a witness in the January 1982 custody proceeding under Briscoe v. LaHue, 460 U.S. 325 (1983).

7. Nancy Bowman

The complaint does not allege improper conduct on the part of Bowman. Plaintiffs acknowledge that the complaint is insufficient as to her and request an opportunity to amend. In light of the court's rulings above, the motion to amend is denied.

8. Amy Meyers

Plaintiffs claim that Amy entered into a conspiracy with Haaland and others to deny them contact with the children. For the reasons stated above, the allegations of conspiracy do not suffice to transform Amy into a "state actor." Indeed, the complaint states no specific facts as to "overt acts" performed by this defendant.

II. Counts Three through Sixteen

These counts state claims for the common law torts of intentional infliction of emotional distress, negligent infliction of emotional distress, slander, and libel. They do not state claims cognizable under 42 U.S.C. §1983. See, e.g., Paul v. Davis, 424 U.S. 693 (1976)(common law defamation not actionable under §1983). The Supreme Court consistently has ruled that the civil rights acts should not render the Fourteenth Amendment "a font of tort law." Id. at 701.

In view of the court's dismissal of the federal causes of action, the court declines to assume jurisdiction over the pendent claims. See United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966). Accordingly, they are dismissed as well.

IT IS SO ORDERED.

Dated: May 6 - 1985

/s/ Marilyn Hall Patel
MARILYN HALL PATEL
United States District Judge

F O O T N O T E S

1/ Haaland's declaration sets forth a very different version of the facts. However, for purposes of this motion the court will view the facts most favorably to the plaintiffs.

2/ A dependency petition initiates proceedings in juvenile court to declare a minor a ward or dependent child. Cal. Welf. & Inst. Code. §325. Minors subject to physical abuse in the home come under the jurisdiction of the statute. Cal. Welf. & Inst. Code §300(d).

3/ Haaland states in his declaration that the court requested he supervise visitation. Haaland Declaration at ¶5.

4/ The Ninth Circuit has granted a rehearing en banc of Haygood v. Younger, Bretz v. Kelman, and Piatt v. MacDougall. Haygood v. Younger, 729 F.2d 613 (9th Cir. 1984). This court will apply the extant law pending a ruling by the en banc panel. In view of the court's determination in Part II of this order, a reversal of Haygood and related cases will not affect the disposition of the instant case.

5/ The court notes that Cal. Welf. & Inst. Code §334 provides for a hearing within 15 or 30 days of the filing of a dependency petition. Plaintiffs do not allege that the statutory procedures were not followed.

6/ As noted, Haaland's declaration indicates that plaintiffs' counsel acceded to the dismissal. Thus, the claim that plaintiffs were denied a hearing on the petition is misleading.

7/ For example, under Cal. Welf. & Inst. Code ¶202.5 DSS workers are assigned the duties of probation officers with respect to victims of child abuse as described under Cal. Welf. & Inst. Code §300 et seq. The Ninth Circuit has afforded probation officers quasi-judicial immunity. Burkes v. Callion, 433 F.2d 318 (9th Cir. 1970), cert. denied, 403 U.S. 908 (1971).

DATE: June 10, 1987

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